



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hiltronics Corporation

File: B-238142; B-238143

Date: April 11, 1990

Stephen S. Heller, for the protester.
Lawrence M. Novicky, for UNICOR, Federal Prison Industries, Inc., an interested party.
Barry M. Sax, Esq., Office of the General Counsel, Defense Logistics Agency, for the agency.
David Hasfurther, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The fact that the awardee had never passed tests needed to be listed on Qualified Products List (QPL) is irrelevant where military specification required purchases of cable assemblies listed on a QPL except where, as here, no sources were currently on QPL in which case the assemblies were to be purchased on the basis of first article testing.

2. Purchase of cable assemblies from UNICOR, Federal Prison Industries, Inc., was proper where no evidence has been presented to substantiate the allegation that the purchase adversely impacted the cable assembly industry. Further, the applicable statutes and regulations do not prohibit purchasing critical life support items, assuming they are involved here, from UNICOR.

DECISION

Hiltronics Corporation protests the issuance of delivery order Nos. DLA400-90-F-0481 and DLA400-90-F-0482 for audio cable assemblies to UNICOR, Federal Prison Industries, Inc., by the Defense General Supply Center (DGSC), Defense Logistics Agency. Hiltronics contends that the purchase orders were improperly issued to UNICOR.

We deny the protests.

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The audio cable assemblies are governed by military specification MIL-C-22442D, which requires that the assemblies be purchased from sources offering products on the appropriate Qualified Products List (QPL) unless there are no sources on the QPL, in which case first article testing must be required. At the time the purchase orders were issued on November 13, 1989, no assemblies were on the QPL. Generally, 18 U.S.C. § 4124 and Federal Acquisition Regulation (FAR) § 8.602(a) require government agencies to purchase supplies of the classes listed in UNICOR's "Schedule of Products made in Federal Penal and Correctional Institutions" from UNICOR so long as the prices charged do not exceed current market prices. See 62 Comp. Gen. 617 (1983); B-175249, Apr. 11, 1972. The cable assemblies being procured here were listed in the schedule, and the agency ordered them from UNICOR. The purchase order included requirements for first article testing.


Hiltronics' first argument is that UNICOR was not eligible to receive these awards since it had never qualified its assemblies for QPL listing. The protester states that it has now had its assemblies tested and approved by the Naval Avionics Center and placed on the QPL. Hiltronics argues that UNICOR will not, as required by the military specification, have its assemblies subjected to the same testing requirements as used for the QPL because according to the delivery orders the first article testing will be done by the Naval Air Systems Command, Naval Air Engineering Center, Lakehurst, New Jersey, rather than the Naval Avionics Center, Indianapolis, Indiana, the qualifying activity listed in the specification.

The fact that the UNICOR cable assemblies had not received QPL testing and approval is irrelevant since at the time that the orders were issued to UNICOR no firm, including the protester, had cable assemblies that had been tested and placed on the QPL. The military specification governing these assemblies provides that if there are no sources listed on the QPL, the procuring agency may obtain the assemblies by requiring "First article testing equivalent to Qualification testing, prior to delivery of any production units." The delivery orders issued to UNICOR provided for first article testing but as the protester points out they indicated that the testing would be conducted by an activity other than that listed in the QPL. We are advised by the agency that this was an error and that in fact the activity listed in the QPL will conduct the tests as set forth in the specification.

Hiltronics next objects to the awards to UNICOR because they will adversely impact on Hiltronics in violation of UNICOR's governing statute. The protester also asserts that UNICOR should not be permitted to supply "critical life support items" like the cable assemblies purchased here.

The statute governing the administration of UNICOR requires that its board of directors diversify, so far as practicable, prison industrial operations so that a single industry shall not have to bear an undue burden of competition with UNICOR. 18 U.S.C. § 4122(b)(1). It also provides that UNICOR shall avoid capturing more than a reasonable share of the federal market for a particular product. 18 U.S.C. § 4122(b)(2). Even assuming that these provisions impose some legal obligation on procuring agencies, a proposition that is not evident in the language of the statute, Hiltronics argues only that these two purchase orders for a total of 10,840 cable assemblies will impact its business, not that it will burden the entire industry. While it may well be that these particular orders will adversely impact the protester's business there is no evidence whatsoever that the entire cable assembly industry will be adversely affected. See B-175249, supra. We also doubt that the number of items ordered will have a significant impact on the overall federal market for these assemblies. Finally, no provision in any of the statutes or regulations governing purchases from UNICOR limits those purchases to noncritical items. Therefore, even if we were to agree with the protester that the items ordered here were critical items impacting on the safety of military personnel, we would have no legal basis upon which to object to the orders.

The protests are denied.


for James F. Hinchman
General Counsel